HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1138 OF 2005.

Bhimrao Baburao Mane,
& Others. ..Petitioners.

Versus.

Agriculture Produce Market
Society. ..Respondent.

Shri. Pradip Shirgate i/b Dilip Bodake for the Petitioners.

Shri. Vinod Jadhav i/b Shri. Vijay Patil for the respondents.

CORAM: S.B.MHASE,J.

DATE : AUGUST 9, 2006.

P.C.

1. Heard both sides. Regular Civil Suit No. 445 of 1994 has been filed by the respondent No.1 in the Court of Civil Judge, Junior Division, Karad for getting possession of property situated at Shaniwar Peth, out of T.P. Scheme No.1, final Plot No. 388, southern-western corner admeasuring 20 x 35 feet, but actually admeasuring 20x40 feet. During the pendency of the said suit, since certain notices were issued by the plaintiff - respondent for summary eviction, the

defendant - petitioner has filed an application Exhibit-42 under Order- 39, Rule - 1 of the Code of Civil Procedure to prohibit the respondent - original plaintiff from taking possession of the property and/or demolishing it. Said application was allowed by the Civil Judge, Junior Division, Karad. Being aggrieved by the said order, original plaintiff - respondent in the petition preferred Miscellaneous Civil Appeal No. 67 of 2004 before the District Judge, Satara which was decided by the 1st Ad-hoc Additional District Judge, Karad on 4.12.2004. Appeal was allowed and the order of injunction was set aside. Therefore, original defendants have filed the present petition.

2. The matter was heard for pretty long time. Thereafter the learned counsel for the respondent - Agriculture Produce Market Committee, on instructions of the said Market Committee has made a statement before this Court that Regular Civil Suit No. 445 of 1994 filed by the respondent - plaintiff is being withdrawn with a liberty to proceed in accordance with law and the powers which are possessed by the Market Committee in respect of the suit property. Learned counsel submitted that the appropriate application

will be filed before the Civil Judge, Junior Division, Karad for getting a permitting to withdraw the suit with liberty as claimed. Under these circumstances, no interference is required in this matter. The only clarification, however, is that till the time the appropriate orders are obtained from the trial Court for withdrawal of the suit, the respondent shall not disturb the possession of the petitioner. However, in case such a permission is granted by the trial Court, the respondent - plaintiff will be at liberty to deal with their property in accordance with law. Under these circumstances, since the suit will not survive, the interim application filed by the defendant in the said suit, probably may not survive. However, it shall not leave the defendant without any remedy. The defendant - petitioner will be also at liberty to take an appropriate legal action as against the plaintiff - respondent, i.e., Agriculture Market Committee in case any other action is started by the plaintiff - respondent after the withdrawal of the suit. With these observations writ petition is disposed of.

(S.B.MHASE, J.)

:sac/2006/single.